

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LISA SMITH on behalf of herself and all others)
similarly situated, et al.)
Plaintiffs,)
v.) No. 1:23-cv-01003-JPH-KMB
APRIA HEALTHCARE LLC,)
Defendant.)

**ENTRY FROM INITIAL PRETRIAL CONFERENCE AND ORDER ON PLAINTIFFS'
MOTION TO CONSOLIDATE ACTIONS AND SET SCHEDULING DEADLINES**

The Parties, by counsel, appeared for an Initial Pretrial Conference on September 1, 2023, with the Magistrate Judge. The Parties discussed case status and Plaintiffs' pending Motion to Consolidate Actions and Set Scheduling Deadlines, [dkt. 9], which the Court **GRANTS IN PART**.

A. Case Consolidation

Plaintiffs' Motion requests that all actions in this District related to the same alleged data breach involving Defendant be consolidated into Case No. 1:23-cv-01003-JPH-KMB. [Dkt. 9.] At the conference, the Parties confirmed that the thirteen (13) cases listed in the bullet points below arise from the same or similar operative facts as Case No. 1:23-cv-01003-JPH-KMB and should be consolidated into it. At the conference, Plaintiffs' counsel Lynn Toops represented that she has the authority to speak on behalf of Plaintiffs in twelve of the thirteen related cases. Counsel William Riley and Melissa Yeates, who has appeared on behalf of Intervenor Suzanne Cuyle, also participated in all aspects of the conference and also consented to the consolidation plan set forth below. Defendant consented to consolidation in an earlier-filed Motion to Extend CMP Deadline Dates and Notice of Defendant's Concurrence on Consolidation. [Dkt. 30.]

At the conference, the Magistrate Judge discussed the logistics of consolidation, and counsel for all Parties consented to consolidation as further set forth herein. The Clerk is **DIRECTED** to **CONSOLIDATE** the following cases into *Smith* (Case No. 1:23-cv-01003-JPH-KMB), which will be the master case:

- *May et al. v. Apria Healthcare LLC*, No. 1:23-cv-01072-JPH-KMB
- *Hohenberry v. Apria Healthcare LLC*, No. 1:23-cv-01074-JPH-KMB
- *Thomas v. Apria Healthcare, LLC*, No. 1:23-cv-01096-JPH-KMB
- *Cuyle v. Apria Healthcare, LLC*, No. 1:23-cv-01042-JPH-KMB
- *Herrera v. Apria Healthcare LLC*, No. 1:23-cv-01031-JPH-KMB
- *Depinto v. Apria Healthcare LLC*, No. 1:23-cv-01056-JPH-KMB
- *Humphries et al. v. Apria Healthcare, LLC*, No. 1:23-cv-01147-JPH-KMB
- *Kramer v. Apria Healthcare, LLC*, No. 1:23-cv-01066-JPH-KMB
- *Boyd v. Apria Healthcare LLC*, No. 1:23-cv-01085-JPH-KMB
- *Curry v. Apria Healthcare, LLC*, No. 1:23-cv-01153-JPH-KMB
- *B.B. v. Apria Healthcare Group, LLC*, No. 1:23-cv-01187-JPH-KMB
- *Rabinovich v. Apria Healthcare, LLC*, No. 1:23-cv-01205-JPH-KMB
- *Bobbitt v. Apria Healthcare LLC*, No. 1:23-cv-01166-JPH-KMB

The Clerk is **DIRECTED** to docket this Order in the above-listed cases as well as in *Smith* (Case No. 1:23-cv-01003-JPH-KMB) and to distribute it via the Court's electronic filing system to all counsel of record in all listed cases. Any appearance, including *pro hac vice*, by counsel entered in the consolidated cases shall remain effective in the master case (Case No. 1:23-cv-01003-JPH-KMB). All subsequent filings should use the caption of the master case as set forth below:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

<p>LISA SMITH on behalf of herself and all others) similarly situated, et al.))) Plaintiffs,))) v.) No. 1:23-cv-01003-JPH-KMB)) APRIA HEALTHCARE LLC,))) Defendant.))</p>

Upon consolidation, and with the consent of the Parties who participated in the conference by counsel, the undersigned Magistrate Judge **RECOMMENDS** to the District Judge that all cases referenced above other than *Smith* (Case No. 1:23-cv-01003-JPH-KMB) be **administratively closed** after the consolidation has occurred.

B. Initial Case Management Deadlines

Plaintiffs' Motion also requests that the Court set deadlines for Plaintiffs to file a consolidated amended complaint and for Defendant to file a corresponding response based on the timing of its order appointing interim class counsel or other designated counsel. [Dkt. 9 at 4.] The Court declines to follow the timing proposed by the *Smith* counsel but **GRANTS IN PART** the request such that Plaintiffs are **ORDERED** to file an amended complaint¹ in the consolidated action **within forty-five (45) days of the date of this Order**, and Defendant shall file an answer or otherwise respond to that amended complaint **within thirty (30) days** of the filing of that amended complaint.

¹ The Parties should take care to ensure that jurisdiction has been properly pled in the amended complaint, noting that residence and citizenship are not synonyms. Citizenship is what matters under 28 U.S.C. § 1332. *Meyerson v. Harrah's E. Chicago Casino*, 299 F.3d 616, 617 (7th Cir. 2002). For an LLC, its citizenship is that of its members; the Parties must trace the citizenship of all members of the LLC. *Id.*

At the conference, and based on an agreement previously reached by counsel for all Parties, Defendant made an oral motion that it need not file a response to the operative complaint until after consolidation has occurred and the forthcoming amended complaint has been filed. The Court granted Defendant's request without objection by any Plaintiffs' counsel. Accordingly, Defendant need not answer or otherwise respond to the initial complaint in these actions; however, it must answer or otherwise respond to the forthcoming amended complaint on the timeline set forth above.

C. Other Items

The Motion to Appoint Interim Counsel in *Smith* is now fully briefed and will be ruled upon by the District Judge in due course. [Dkts. 13; 25; 26.] Until that motion is ruled upon, the Court encourages all Plaintiffs' counsel to continue to work together to the best of their ability.

This matter is set for a **Zoom Status Conference on October 5, 2023, at 11:00 a.m. (Eastern)**, with Magistrate Judge Kellie M. Barr. The Court will contact counsel by separate email with information to be used to participate in the conference.

Date: 9/6/2023



Kellie M. Barr
United States Magistrate Judge
Southern District of Indiana

Distribution: All counsel of record via ECF.